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In re Application of
Craig Hansen et al.
Application No. 10/616,303
Filed: December 8, 2003
Attorney Docket No. 43876-144

OFFICE OF PETITIONS

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: DECISION DISMISSING
: PETITION
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This is a decision on the petition, which is treated under 37 CFR 1.182, filed December 8, 2003, requesting that the above-identified application be accorded a filing date of July 10, 2003, with Figures 34D and 34E as described in the specification, as a part of the original disclosure.

On July 10, 2003, the application was filed. However, on October 7, 2003, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts indicating amongst other requirements, that the application had been accorded a filing date July 10, 2003 but that Figures 34D and 34E as described in the specification appeared to have been omitted from the application.

In response, the present petition was filed. Petitioners argue that a complete application was present on July 10, 2003, for filing date purposes. Petitioners point to their postcard receipt as evidence that 166 pages of drawings were among the application papers filed on July 10, 2003 and argue that one (1) sheet of drawings containing Figures 34D and 34E as described in the specification were included in that number. Petitioners request that the application be accorded a filing date of July 10, 2003, with Figures 34D and 34E as a part of the original disclosure.

The argument and evidence supplied with the petition have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503). Unfortunately, petitioners' postcard receipt cannot serve as evidence that the drawing sheet containing Figures 34D and 34E were received in the USPTO. The postcard receipt is itemized by the number of sheets filed not by the Figures. A review of the file reveals that 166 pages of drawings were filed with the application. However,

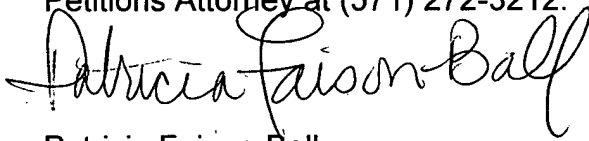
the review does not show Figures 34D and 34E are included in the file and furthermore, the drawing sheets are not numbered and thus it would be impossible to make a determination that the one sheet containing Figures 34D and 34E were included with the application.

The petition is **DISMISSED**.

USPTO PALM records indicate the filing date has been changed to December 19, 2003 but the filing date should have been changed to December 8, 2003, the date the omitted drawings were supplied.¹ December 19, 2003 was the date the remaining missing requirements were filed as a supplemental response to the Notice and with a one month extension of time request.

The application is being returned to the Office of Initial Patent Examination for a correction of the filing date to December 8, 2003, the date Figures 34D and 34E were filed and using the application papers filed on that date and the application papers filed July 10, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

¹The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the omitted item at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted item in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the omitted item was in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted item in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted item with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such item and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)). The third option is in the absence of electing options 1) or 2) above, to constructively opt to accept the filing date which has been accorded with the papers filed upon application. With option 3), no petition under 37 CFR 1.182 is necessary for that purpose.